

VENCE ALLEN LYNCH §
v. § CIVIL ACTION NO. 6:09cv14
DIRECTOR, TDCJ-CID §

The Petitioner Vence Lynch, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Lynch stated that the street time credits he earned on parole are not being applied to his sentence since the revocation of parole. The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent contended that the statute of limitations had expired on Lynch's claims. Lynch filed a response to the answer, but the Magistrate Judge issued a Report recommending that the petition be denied based upon the statute of limitations. Lynch objected to the Magistrate Judge's Report, but did not discuss the limitations issue in his objections; the petition was dismissed, and Lynch filed an appeal, which was dismissed by the Fifth Circuit Court of Appeals on April 15, 2010, for want of prosecution.

Lynch subsequently filed a motion for relief from judgment under Rule 60(b), Fed. R. Civ. P. In this motion, Lynch contended that the federal court lacked jurisdiction to dismiss his petition as time-barred, that the State of Texas is refusing to award him time credits owed to him due

to an erroneous release, and that his life as a free citizen is being twice put in jeopardy for the same sentence. He asked that the Court find that it has jurisdiction to rule on the merits of his claim, that he be granted credit for the flat time he accrued under an erroneous release, find that his sentence has already been discharged, and order him released from having to serve the same sentence a second time.

After review of the Petitioner's pleadings, the Magistrate Judge issued a Report recommending that the Petitioner's motion for relief from judgment be denied. The Magistrate Judge noted that Lynch's arguments did not change the fact that his petition was barred by the statute of limitations, saying that "Lynch offers no basis upon which he should be entitled to relief from judgment." A copy of the Magistrate Judge's Report was sent to Lynch at his last known address, return receipt requested, but no objections have been received; accordingly, Lynch is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 27) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's motion for relief from judgment (docket no. 26) be and hereby is DENIED.

SIGNED this 4th day of March, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE